

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG SCHMUTZ and JOSEF GENTISCHER

Appeal No. 2006-1034

Application No. 09/600,879

Technology Center 3600

ON BRIEF



Before CRAWFORD, LEVY, and HORNER Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 22-27, 30-34, and 37. Claims 35, 36, and 38-40 have been allowed (Brief, p. 2). In addition, the rejection of claims 28, 29, and 41 has been withdrawn by the

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examiner (Answer, p. 3). These claims are objected to and will be allowed if rewritten in independent form (*id.*).

We REVERSE.

BACKGROUND

The appellants' invention relates to a device for loading substrates into and unloading them from a clean room (Specification, p. 1).

Claim 22 is representative of the invention, and is reproduced as follows:

22. A device for loading or unloading substrates into or out of a clean room, comprising:

a lock device provided with a hermetically sealable lock opening which provides access to the clean room;

a transport box having substrates situated therein, said transport box being received on said lock device for movement through said hermetically sealable lock opening into or out of the clean room;

a processing installation adjoining said hermetically sealable lock opening;
and

an adapter device arranged between said processing installation and said lock device, and being held on said processing installation and adjustably oriented relative thereto, said lock device being releasably fastened on said adapter device.

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The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Bacchi et al. (Bacchi)	5,538,385	July 23, 1996
Bonora et al. ('721)	6,138,721	Oct. 31, 2000 (filed Sep. 2, 1998)
Bonora et al. ('808)	6,220,808	Apr. 24, 2001 (filed Jul. 13, 1998)

Claims 22-27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bonora ('808), which incorporates by reference U.S. Patent 6,138,721 to Bonora (Bonora ('721)).

Claims 30-34, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bonora ('808) (which includes Bonora ('721)) and Bacchi.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed November 1, 2004) and the Final Rejection (mailed December 8, 2003) for the examiner's complete reasoning in support of the rejections, and to the Brief (filed August 11, 2004) and Reply Brief (filed January 3, 2005) for the appellants' arguments thereagainst.

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered. See 37 C.F.R. § 41.37(c)(1)(vii)(eff. Sept. 13, 2004).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we make the determinations which follow. We begin with the rejection of claims 22-27 under 35 U.S.C. § 102(e) as being unpatentable over Bonora ('808), which includes Bonora ('721). To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting *Hansgirg v. Kemmer*, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Appellants assert (Brief, page 4) that claim 22 calls for the adapter device being held on the processing installation and adjustably oriented relative to the

processing installation, and the lock device being releasably fastened on the adapter device. It is argued that these features are not anticipated by Bonora, because Bonora fails to disclose both that the adapter has an adjustable orientation to the processing installation and that the lock device is releasably fastened to the adapter. It is argued, (*id.*), that

Bonora fails to expressly disclose whether the ball and socket connection assembly (i.e. the assembly shown in Figs. 3-5 of Bonora '721) engages directly with the load port assembly 24 (as in Bonora '721) or with the adapter plate 27 (in a manner similar to that shown in Bonora '721 but with adapter plate 27 of Bonora '808 in place of the load port plate 10 in Bonora '721).

Appellants further assert (Brief, p. 6) that

Not only does Bonora '808 and Bonora '721 fail to disclose, in the case of the adapter plate 27 being part of the load port itself, a releasable fastening system for the load port to the adapter plate, but they also fail to disclose any motivation for releasably fastening the load port and adapter plate forming part of the load port.

On the other hand, if the adapter plate 27 is provided as part of the BOLTS interface of the processing tool 20, as disclosed in col. 6, lines 34-35 of Bonora '808, then clearly the load port 24 would be releasably fastened to the adapter plate. However, in that case, as the adapter plate 27 is part of the BOLTS interface, it would appear that the adapter plate 27 is fixed and not adjustably oriented relative to the processing tool 20.

The examiner's position (Final Rejection, pages 2 and 3) is that in Bonora ('808) the adapter device is held on the processing installation (Figures 1A and 2), and is adjustably oriented relative thereto via the tilt and go attachment system 25,

and releasably fastened to the lock device. The examiner asserts (Answer, p. 4) that an adaptor plate, in general, is to attach two otherwise incompatible objects, and that the purpose of the adaptor plate would be defeated if the load port was permanently attached thereto, because it would not allow other load ports to ever be used therewith. The examiner urges (*id.*) that even though the attachment is not explicitly shown, it is considered inherent that the load port (lock device) would be releasably attached to the adaptor plate. The examiner additionally asserts (Answer, p. 5) that in the embodiment where the adapter is part of the BOLTS interface, there is no valid reason to make the assumption that the adapter plate would be fixed, and that

Bonora certainly does not show or suggest that the "tilt and go" interface 25 would ever be positioned anywhere other than between the BOLTS interface and the adaptor plate, as shown in figure 1A, so there is no reason to assume that it would be positioned between the load port and the adaptor plate instead, as appellant has done in page 6, lines 21-24.

The examiner further asserts (*id.*) that "[s]ince Bonora ('808) shows the "tilt and go" interface only between the BOLTS interface and the adapter plate, there is no reason to conclude that it [the "tilt and go"] would instead be attached to the load port.

From our review of the record, we agree with appellants, for the reasons set forth in the Brief (pp. 4-7) and the Reply Brief (p. 2), that the disclosure of Bonora ('808) fails to anticipate claim 22. Bonora ('808) discloses that an adapter plate 27 may be provided between the BOLTS interface 22 and the load port 24 (col. 6,

lines 29 and 30). It is disclosed (col. 6, lines 32-35) that as shown in FIG. 1, the plate may be provided as part of, and particularly configured for, a particular load port. Alternatively, the adapter may be provided as part of the BOLTS interface.

From these disclosures, we find that an adapter plate 27 may be placed, as shown in figure 1A, between BOLTS interface 22 of processing tool 20 and load port (locking mechanism) 24. We further find that the adapter plate can be part of either the load port or the BOLTS interface. However, as noted by appellants throughout the Brief, although figure 1A shows the adapter 27 being connected to the BOLTS interface the reference does not disclose how the adapter 27 is connected to load port 24, and we are left to speculate as to how they are connected.

In the Bonora ('721) reference, incorporated by reference into the Bonora ('808) patent (col. 6, lines 23-25), we find, as noted by the examiner (Answer, p. 5) that Bonora ('721) does not have an adaptor plate. Bonora ('721) shows the "tilt and go" attachment system 25 shown in figure 1A of Bonora ('808). From the disclosure in Bonora ('808) that the adapter plate 27 can be part of the load port or the BOLTS interface, we agree with appellants (Brief, p. 6) that in the embodiment where the adapter plate 27 is part of the load port, there is no disclosure that the load port is releasably attached to the adaptor. Rather, the load port can be, as asserted by appellants (brief, p. 5) bonded, brazed, spot welded or otherwise non-releasably fastened to the adapter. To establish inherency, the asserted function must necessarily flow from the disclosure of the prior art. Possibilities or probabilities are not sufficient.

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In sum, because neither Bonora ('808) nor Bonora ('721) disclose the load port to releasably fastened to the adapter, we find that Bonora ('808) fails to anticipate claim 22.

In addition, from the disclosure of Bonora ('808) that the adaptor may be part of the BOLTS interface, we agree with appellants (brief, p. 6) that if the adapter plate were part of the BOLTS interface, there is no description by Bonora ('808) that the adapter would be adjustably oriented relative to the processing tool. Thus, we find that the examiner has resorted to unfounded speculation in finding that the load port (lock device) would inherently be releasably attached to the adaptor plate. Accordingly, we are unable to sustain the rejection of claim 22, or of claims 23-27, which depend therefrom, under 35 U.S.C. § 102(e) as being anticipated by Bonora ('808).


We turn next to the rejection of claims 30-34 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Bonora ('808), including by reference Bonora ('721) and Bacchi. We will not sustain this rejection because Bacchi fails to make up for the basic deficiencies of Bonora ('808) and Bonora ('721).


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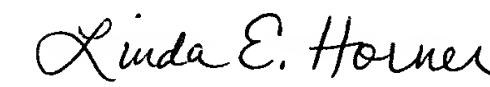
CONCLUSION

To summarize, the decision of the examiner to reject claims 22-27 under 35 U.S.C. § 102 is reversed. The decision of the examiner to reject claims 30-34, and 37 under 35 U.S.C. § 103(a) is reversed.

REVERSED


MURRIEL E. CRAWFORD
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge


LINDA E. HORNER
Administrative Patent Judge

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PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06824

SL/jrg